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A CIA view of Freedom of Information

by Ron Gunzburger

The Freedom of Information Act "as it is written, does indeed do damage to the workings of the CIA. If it damages the CIA, it damages the country," Ernest Mayerfeld, CIA Deputy Counsel said.

Mayerfeld was one of three speakers who explained their views on balancing the need for open government with the need for national security at the Society of Professional Journalists/Sigma Delta Chi conference at GW on the Act this past weekend. Mayerfeld, along with Kathleen A. Buck, assistant general counsel for the Defense Department, called for changes in the Act.

Mayerfeld said the CIA has "no quarrel" with the idea behind the Freedom of Information Act, which, he said, lets "sunshine into the bureaucracy." He said official CIA policy actually supports the existence of the Act.

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He referred to CIA Director William Casey's recent remarks before the American Legion convention, where Casey called for "getting rid" of it, but said that Casey, in a recent letter to *The New York Times*, said the Act is simply in need of changes, not repeal.

The Freedom of Information Act states that the public, including non-U.S. citizens, has access to identifiable and existing records of a federal department or agency. Those requesting information are not required to demonstrate a need or even a reason. The burden of proof for withholding material sought by the public is thus placed on the federal government.

Any person or institution can request information under the Act rules and the agency or department must reply to the request within 10 business days or state in a letter the reason it has not complied.

Allowances are made in the Act for nine exemptions. These include classified information, internal personnel rules, trade secrets, investigatory records used for law enforcement purposes and information relating to the regulation of financial institutions.

The Freedom of Information Act has always been a controversial issue in the executive branch. President Johnson opposed its original passage and vetoed it, but the Congress overrode his veto. President Nixon wanted changes in the Act. President Ford vetoed the 1974 Act amendments because he felt they endangered national security, although his veto was struck down by Congress.

President Reagan is now calling for changes in the Act in a package presented to Congress by Sen. Orrin Hatch (R-Utah). Included in these changes is an extension of the compliance period to 20 days, and Buck said the Pentagon is strongly in support of changes like these.

The Act, when applied to the CIA, has "very little benefit" to the public, Mayerfeld said. People requesting CIA documents usually get "Swiss cheese," he said, referring to the CIA's prerogative to black out any material it feels is sensitive.

Mayerfeld said people will get "mountains of papers with lots of black marks. Usually, there is more black than white on the paper." The information people receive is usually "meaningless," he said, and can be potentially misleading.

In comparing the Defense Department to the CIA, Buck commented, "We give out tremendous amounts of information, unlike the CIA." The only things the Department does not give out are detailed weapon design plans and operational plans. The bulk of the Defense Department's requests are for individual service records.

Both Mayerfeld and Buck said as the Freedom of Information Act stands now, foreign nationals have as much access to information as do U.S. citizens. If Leonid Brezhnev wanted to get CIA information under the Act, Mayerfeld said, he would be allowed to request and receive it under present rules.

Buck said she is opposed to letting foreign nationals have access to documents through the Act because of cost reasons. As she put it, "U.S. taxpayers shouldn't subsidize foreign nationals."

Now, she said, everyone obtaining materials has to pay search and copy costs, running \$6 an hour for searching and 10 cents a page for copies at the Department of Defense. Reagan's plan calls for adding the review costs to the present charges.

The Privacy Act, sometimes confused with the Freedom of Information Act, allows only

citizens and resident aliens access to the information prescribed under its rules. Under the Privacy Act, citizens have a right to government information about themselves, such as FBI files and military service records.

Mayerfeld said that the only information the CIA should give out is information covered by the Privacy Act. He did not mention that federal law allows the CIA not to comply even with the Privacy Act. Mayerfeld said, however, that the agency does voluntarily comply.

Although it is unlikely that Reagan's proposed changes will be debated by Congress this year, extensive lobbying by federal agencies and departments, as well as the press and civil liberties groups, can be expected when the 98th Congress convenes in January.